

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5161 OF 1999

Mr.Tilakdari Dukhiram Pracheta .. Petitioner
versus

The Principal, Mahatma Gandhi Hindi
Vidyalaya & ors .. Respondents

Mr.M.V.Limaye for Petitioner

Ms.S.S.Bhende, Assistant Government Pleader for
Respondent nos. 4 and 5.

Respondent nos. 1 and 2 served.

**CORAM : S.B.MHASE AND
D.G.KARNIK, JJ**

DATED : 8th February, 2006

P.C.

1. Heard learned counsel for the petitioner and the Assistant Government Pleader for respondent nos. 3,4 and 5. None present for the respondent nos. 1 and 2.

2. By this petition, the petitioner challenges the communication dated 29th July, 1999 sent by the respondent no. 3 - Education Officer to the respondent no. 1 regarding the pay scales of the petitioner.

3. The petitioner is a graduate holding two degrees namely B.A. and B.Ed. He was appointed as an assistant teacher for teaching to Vth, VIth and VIIth standards in the school of the respondent no.1. The petitioner was granted a pay scale of Rs.5500/- to Rs.9000/-. An application for approval of the appointment of the petitioner and other assistant teachers employed by the respondent no. 1. By the impugned letter dated 29th July, 1999 the respondent no.3 granted approval for the appointment of the petitioner, in the pay scale of Rs.3200/- to Rs.4900/- . Being aggrieved by that order, the petitioner has approached this Court.

4. Learned counsel for the petitioner submits that he is a graduate trained teacher and was entitled to a graduate pay scale of Rs.5500/- to Rs.9000/-. In any event, if any lower pay scale was to be sanctioned to the petitioner, hearing should have been granted. However, no hearing was given to the petitioner and the order was passed without hearing the petitioner. In para 9 of the affidavit the petitioner has specifically averred that the order was passed without hearing him and without following the principles of natural justice. No affidavit in reply has been filed

denying these averments.

5. We are of the view that the principles of natural justice have been clearly violated. It is not the case of the respondents that the petitioner is not qualified nor is it the case of the respondents that the petitioner is not a graduate trained teacher. If a pay scale lower than the pay scale which was granted by the respondent no.1 to the petitioner was to be granted, the petitioner should have been heard in the matter and in any event a reasoned order should have been passed for sanctioning a lower pay scale. This has not been done. In the circumstances, the impugned order needs to be quashed. We clarify that this would not prevent the respondent no.3 from passing a fresh order after granting an opportunity of hearing to the petitioner in the event the respondent no. 3 is still of the opinion that a lower pay scale should be granted to the petitioner.

6. For these reasons, petition is allowed and the impugned order is quashed and set aside. The respondent no.3 however shall be entitled to pass a fresh order fixing the pay scale of the petitioner and the event he is of the opinion that the petitioner is entitled to a pay scale lower

than the contractual pay scale, such an order shall be passed after notice to the petitioner and after granting him an opportunity of being heard. Rule is made absolute to the extent indicated above. No costs.

(D.G. KARNIK, J)

(S.B.MHASE, J)